

UNITED STATES
v.
JAMES M. MILLS (ON RECONSIDERATION)

IBLA 84-685

Decided September 26, 1986

Petition for reconsideration of United States v. James M. Mills, 91 IBLA 370 (1986).

Petition granted; United States v. James M. Mills, 91 IBLA 370, affirmed on reconsideration.

1. Desert Land Entry: Cancellation

The government, by granting an extension of time to an entryman in which to make his proof of a completed desert land entry, is not estopped from a later rejection of that entry by virtue of the fact that an extension of time was allowed. When, at the time of granting the entryman additional time to prove he conveyed water upon desert land, the Government cautioned the entryman that he would be required to prove compliance with his irrigation plan, the entryman had notice he would be required to show his plan of reclamation had been completed when final proof was made.

APPEARANCES: W. F. Ringert, Esq., Boise, Idaho, for appellant; Robert S. Burr, Esq., Office of the Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On July 21, 1986, a petition for reconsideration of United States v. James M. Mills, 91 IBLA 370 (1986) was filed with this Board. In that case, the Board determined Mills failed to irrigate his desert land entry in conformity to his irrigation plan. In his petition for reconsideration of the Board's earlier decision, Mills raised numerous arguments previously made, both before this Board and the Administrative Law Judge whose decision was reviewed by the earlier decision. Those arguments were addressed by the Board's opinion issued April 28, 1986, and rejected. The petition for reconsideration, however, has raised a matter not previously considered concerning the principal issue on appeal which merits examination pursuant to provision of 43 CFR 4.21(c). Reconsideration is granted, therefore, to permit examination of this issue.

In his petition for reconsideration, Mills argues that the Bureau of Land Management (BLM) is estopped to deny the validity of his desert land entry by circumstances attending the grant of an extension of time to make final proof. Mills' letter making application for extension of time in which to complete his irrigation works is quoted in part at 91 IBLA 370-71, as is the government response granting an additional year in which to complete the proposed reclamation plan. Now, Mills argues:

The [BLM time extension] decision did not advise Mills that he had to have 300 miners inches of new and separate capacity to serve the DLE [Desert Land Entry], or that five-eighths of a miners inch per acre was not adequate for irrigation of the DLE, or that the 100 miners inch portion of the existing system mentioned in the Request could not be used to deliver water to the DLE, or that system capacity could not be rotated between the deeded land and the DLE in order to accomodate the crop rotation adopted by Mills. Neither did the BLM advise Mills that the principles established in the Bingham case [Wallace S. Bingham, 21 IBLA 266, 82 I.D. 377 (1975) 1/] were not available for his DLE. In fact, the Decision should be regarded as advising Mills that five-eighths of a miners inch per acre was adequate for irrigation of the DLE and that 100 inches of the existing capacity could be used exclusively for irrigation of the DLE. The Decision thus constituted a crucial misstatement of the BLM's position in an official decision.

(Petition for Reconsideration at 17, 18).

The possible effects of this extension of time granted by BLM to Mills was considered in our earlier decision in a somewhat different aspect: there the theory discussed was that the extension had effected an amendment of Mills plan of irrigation which served to alter the quantum of proof required of the entryman. This argument was rejected both by the Administrative Law Judge and this Board. See Mills, supra at 374. This Board has not, however, explicitly addressed the estoppel argument now raised, although

1/ The cited decision deals, in part, with the argument that a desert land entryman was obliged to provide a permanent irrigation system, rather than a movable system. This argument was rejected in Bingham. In the discussion of this issue, the Board observed that parts of the movable system could be used on other lands belonging to the claimant. That question is not at issue here, where the record establishes that, at the time of final proof, Mills had not been able to complete his planned scheme of irrigation. In our prior decision in this case, the Board held Mills was not allowed to diminish his use of water in other fields outside his entry to make up his shortage of water for his entry pending completion of the planned reclamation system as planned.

it was arguably implicit in the prior contention that there was an amendment of the reclamation plan which arose from the request for extension of time.

To support his estoppel argument, Mills relies upon United States v. G. Patrick Morris, 19 IBLA 350, 82 I.D. 146 (1975). In Morris, this Board observed, while rejecting an estoppel argument, that an essential element of an estoppel case is a showing that a claimant has relied upon a "critical misstatement in an official decision." Id. at 19 IBLA 377, 82 I.D. 159. Mills now argues there was such a misstatement in the BLM decision granting an extension of time, which he relied upon to his damage, and which led him to make his final proof on the assumption that a modification of his irrigation plan had been approved by BLM. The entire text of the BLM order granting the extension, which appears to be a "form-decision," is as follows:

October 2, 1979

DECISION

James M. Mills

:
:
:

Desert Land Entry

Extension of Time Granted

On May 30, 1979, the above-named entryman made application for an extension of time within which to make final proof on desert land entry, I-5007.

The request has been examined and considered, and the reasons given appear to be adequate to justify an extension of time.

Pursuant to the Act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 333), an extension of time of one year from the date final proof would have been due is hereby granted. Final proof will, therefore, be due on July 11, 1980. No further extensions of time beyond the one hereby granted should be contemplated by the entryman.

Substantial compliance with your plan of irrigation and reclamation will be required at the time of final proof. The irrigation system must be fully installed and operable so that all of the irrigable land can be irrigated. You will probably be required to have your irrigation system in operation at the time our district personnel make their field inspection for final proof compliance.

/s/ William E. Ireland

William E. Ireland, Acting Chief
Branch of L&M Operations

(Underscoring in original).

This extension was granted pursuant to 43 CFR 2522.3, implementing the Act cited in the quoted order, which allowed extensions of time up to 3 years. ^{2/} Mills, in his application for extension of time had discussed the progress of the development of his plan of reclamation before giving his reason for seeking more time, and had expressed the opinion that less water was needed for the project than was originally believed. See Mills, *supra* at 371. As concerned his reason for needing additional time to complete his irrigation works, however, he stated:

Because I did not know until May 1979 that my 1974 right of way agreement could not grant me the right of way I needed and now find I must wait for the BLM to grant me a right of way; I hereby request an extension of time in which to take proof on my desert land entry.

Letter dated May 18, 1979, Mills to Mathews, at 2.

[1] The reason stated in Mills' application in support for his request for more time, therefore, was simply that he needed time to obtain a right-of-way so he could build improvements to his waterline. Whether his prior discussion of his views concerning the reduced need for water of his entry could be considered an application to amend his reclamation plan need not be decided, as nothing in the BLM decision extending time to complete his plan can be considered as approving of any proposed change in the plan previously offered by Mills. The October 2, 1979, extension order makes this plain when it admonishes Mills that "[s]ubstantial compliance with your plan of irrigation will be required at the time of final proof."

When read as a response to Mills' letter of May 18, 1979, the extension order is not an acceptance of Mills' discussion of the altered irrigation need of his entry. The extension order responds only to Mills' application for more time. It does not respond at all to Mills' suggestion that less irrigation than previously planned might be sufficient for the desert entry. Indeed, the order's silence concerning the irrigation needs, when coupled with the admonition that the irrigation plan must be complied with, can only be considered a rejection of any suggested irrigation plan change proposed by Mills.

At any rate, nothing in the October 2, 1979, BLM extension order can reasonably be read to be a "crucial misstatement" by BLM, as Mills now contends, so as to estop the agency from cancelling this entry. Under the circumstances, Mills could not reasonably have assumed that the grant of an extension of time to prove his entry was tantamount to an approval of a modification of his plan of irrigation. Nothing in the order extending time or

^{2/} Mills could, therefore, have applied for more time rather than making final proof of his claim in 1980. As was previously noted *supra* in Mills at page 377 n.3, his late completion of his entry need not necessarily work a hardship on him even now. Cf. CFR 1871.1-1.

in the dealings of the parties supports this theory, and it must therefore be rejected. As previously noted, all petitioner's remaining arguments on reconsideration have been previously considered and rejected by our opinion in Mills, supra.

Accordingly, pursuant to the authority delegated by the Secretary of the Interior, to the Board of Land Appeals, 43 CFR 4.1, the decision in United States v. Mills, supra, is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

James L. Burski
Administrative Judge.

